



**US Army Corps
of Engineers®**
Buffalo District


Solicitation No.
W912P4-04-R-0012

MOUNT MORRIS DAM, DEBRIS AND SILT REMOVAL,

**Mount Morris,
Livingston County, NY**

**Construction Solicitation
And Specifications**

April, 2004

SOLICITATION, OFFER, AND AWARD <i>(Construction, Alteration, or Repair)</i>		1. SOLICITATION NO. W912P4-04-R-0012	2. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input checked="" type="checkbox"/> NEGOTIATED (RFP)	3. DATE ISSUED 4/15/04	PAGE OF PAGES
IMPORTANT - The "offer" section on the reverse must be fully completed by offeror.					
4. CONTRACT NO.		5. REQUISITION/PURCHASE REQUEST NO. W81EU640646946		6. PROJECT NO. MT. Morris Dam Debris Removal	
7. ISSUED BY Department of The Army US Army Corps of Engineers, Buffalo District 1776 Niagara Street Buffalo, NY 14207-3199		CODE W912P4	8. ADDRESS OFFER TO SEE ITEM 7		
9. FOR INFORMATION CALL: 		A. NAME Richard W. Reffner		B. TELEPHONE NO. (Include area code) (NO COLLECT CALLS) 716-879-4250	

SOLICITATION

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS (Title, identifying no., date):

This procurement is entered into under authority of Section 8(a) of the Small Business Act, as amended (15 USC 637(a) and is negotiated under authority of 10 USC 2304(a)(17), as implemented by FAR 19.808-1(b).

Mount Morris Dam Debris and Silt Removal, Mount Morris, Livingston County, NY, Solicitation No. W912P4-04-R-0012, dated 4/15/04.

Work consists of, but is not limited to, furnishing all labor, plant, material and equipment necessary to grade the existing haul road and remove debris and silt from the upstream side of the Mount Morris Dam for offsite disposal in strict accordance with the plans and specifications. NIACS CODE: 237990

Estimated magnitude in terms of physical characteristics and estimated price range is between \$250,000.00 and \$500,000.00.

BID SUBMITTAL REQUIREMENTS: Standard Form 1442, entitled "Solicitation, Offer and Award", Bidding Schedule Pages, the completed SECTION 00600 along with Bid Bonds to be considered responsive.

11. The Contractor shall begin performance within <u>10</u> calendar days and complete it within <u>100</u> calendar days after receiving <input type="checkbox"/> award, <input checked="" type="checkbox"/> notice to proceed. This performance period is <input checked="" type="checkbox"/> mandatory, <input type="checkbox"/> negotiable. (See Section 00800, Para. 1	
12A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? <i>(If "YES," indicate within how many calendar days after award in Item 12B.)</i> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	12B. CALENDAR DAYS 10
13. ADDITIONAL SOLICITATION REQUIREMENTS:	
A. Sealed offers in original and <u>0</u> copies to perform the work required are due at the place specified in Item 8 by <u>4:30 PM</u> (hour) local time <u>May 5, 2004</u> (date). If this is a sealed bid solicitation, offers will be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.	
B. An offer guarantee <input checked="" type="checkbox"/> is, <input type="checkbox"/> is not required.	
C. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.	
D. Offers providing less than <u>60</u> calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.	

OFFER (Must be fully completed by offeror)

14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)

15. TELEPHONE NO. (Include area code)

16. REMITTANCE ADDRESS (Include only if different than Item 14)

CODE

FACILITY CODE

17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government in writing within _____ calendar days after the date offers are due. (Insert any number equal to or greater than the minimum requirement stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in Item 13D.)

AMOUNTS ► SEE BID SCHEDULE

18. The offeror agrees to furnish any required performance and payment bonds.

19. ACKNOWLEDGMENT OF AMENDMENTS

(The offeror acknowledges receipt of amendments to the solicitation - give number and date of each)

AMENDMENT NO.										
DATE										

20A. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER
(Type or print)

20B. SIGNATURE

20C. OFFER DATE

AWARD (To be completed by Government)

21. ITEMS ACCEPTED:

22. AMOUNT

23. ACCOUNTING AND APPROPRIATION DATA
W81EU64064694624. SUBMIT INVOICES TO ADDRESS SHOWN IN
(4 Copies unless otherwise specified)

ITEM

25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO

☐ 10 U.S.C 2304(c) () ☐ 41 U.S.C 253(c) ()

26. ADMINISTERED BY

CODE

27. PAYMENT WILL BE MADE BY

Department of the Army
US Army Engineering District, Buffalo
1776 niagara Street
Buffalo, NY 14207-3199

USACE Finance Center
ATTN: CEFC-AO-P
5720 Integrity Drive
Millington, TN 38054-5045

CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE

☐ 28. NEGOTIATED AGREEMENT Contractor is required to sign this document and return _____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all work requirements identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications incorporated by reference in or attached to this contract.

☐ 29. AWARD (Contractor is not required to sign this document.) Your offer on this solicitation is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.

30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN (Type or print)

31A. NAME OF CONTRACTING OFFICER (Type or print)

30B. SIGNATURE

30C. DATE

31B. UNITED STATES OF AMERICA

BY

31C. AWARD DATE

MOUNT MORRIS DAM DEBRIS AND SILT REMOVAL,
MOUNT MORRIS, LIVINGSTON COUNTY, NY
W912P4-04-R-0012

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SECTION 00010
SOLICITATION, OFFER, AND AWARD (SF 1442) AND BIDDING SCHEDULE

MOUNT MORRIS DAM DEBRIS AND SILT REMOVAL
MOUNT MORRIS DAM
MOUNT MORRIS, LIVINGSTON COUNTY, NEW YORK

BIDDING SCHEDULE

(USE EITHER WORDS OR FIGURES, BUT NOT BOTH)

<u>Item No.</u>	<u>Description</u>	<u>Estimated Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Estimated Amount</u>
<u>Base Year - Summer 2004</u>					
1	Silt and Non-Floatable Debris				
0111	a. First 7,000 CY	7,000	CY	\$_____	\$_____
0112	b. Over 7,000 CY	7,000	CY	\$_____	\$_____
2	Floatable Debris				
0121	a. First 2,000 CY	2,000	CY	\$_____	\$_____
0122	b. Over 2,000 CY	2,000	CY	\$_____	\$_____
3	Access Road - Redressing and Regrading				
0131	a. First 150 Ton	150	TN	\$_____	\$_____
0132	b. Over 150 Ton	150	TN	\$_____	\$_____
Base Year Subtotal Estimated Amount					\$_____

Option Year 1 - Summer 2005

1	Silt and Non-Floatable Debris				
0211	a. First 7,000 CY	7,000	CY	\$_____	\$_____
0212	b. Over 7,000 CY	7,000	CY	\$_____	\$_____
2	Floatable Debris				

0221	a. First 2,000 CY	2,000	CY	\$_____	\$_____
0222	b. Over 2,000 CY	2,000	CY	\$_____	\$_____
3	Access Road - Redressing and Regrading				
0231	a. First 150 Ton	150	TN	\$_____	\$_____
0232	b. Over 150 Ton	150	TN	\$_____	\$_____

Option Year 1 Subtotal Estimated Amount \$_____

Option Year 2 - Summer 2006

1	Silt and Non-Floatable Debris				
0311	a. First 7,000 CY	7,000	CY	\$_____	\$_____
0312	b. Over 7,000 CY	7,000	CY	\$_____	\$_____
2	Floatable Debris				
0321	a. First 2,000 CY	2,000	CY	\$_____	\$_____
0322	b. Over 2,000 CY	2,000	CY	\$_____	\$_____
3	Access Road - Redressing and Regrading				
0331	a. First 150 Ton	150	TN	\$_____	\$_____
0332	b. Over 150 Ton	150	TN	\$_____	\$_____

Option Year 2 Subtotal Estimated Amount \$_____

Option Year 3 - Summer 2007

1	Silt and Non-Floatable Debris				
0411	a. First 7,000 CY	7,000	CY	\$_____	\$_____
0412	b. Over 7,000 CY	7,000	CY	\$_____	\$_____
2	Floatable Debris				
0421	a. First 2,000 CY	2,000	CY	\$_____	\$_____

0422	b. Over 2,000 CY	2,000	CY	\$_____	\$_____
3	Access Road - Redressing and Regrading				
0431	a. First 150 Ton	150	TN	\$_____	\$_____
0432	b. Over 150 Ton	150	TN	\$_____	\$_____

Option Year 3 Subtotal Estimated Amount \$_____

Option Year 4 - Summer 2008

1	Silt and Non-Floatable Debris				
0511	a. First 7,000 CY	7,000	CY	\$_____	\$_____
0512	b. Over 7,000 CY	7,000	CY	\$_____	\$_____
2	Floatable Debris				
0521	a. First 2,000 CY	2,000	CY	\$_____	\$_____
0522	b. Over 2,000 CY	2,000	CY	\$_____	\$_____
3	Access Road - Redressing and Regrading				
0531	a. First 150 Ton	150	TN	\$_____	\$_____
0532	b. Over 150 Ton	150	TN	\$_____	\$_____

Option Year 4 Subtotal Estimated Amount \$_____

**Total Estimated Amount (Base Year, Option Year 1,
Option Year 2, Option Year 3, Option Year 4)** \$_____

CY = Cubic Yard

TN = Ton

END OF SECTION 00010

1. SPECIAL 8(a) CONTRACT CONDITIONS (APR 1984) FAR 52.219-11

The Small Business Administration (SBA) agrees to the following:

(a) To furnish the supplies or services set forth in this contract according to the specifications and the terms and conditions hereof, by subcontracting with an eligible concern pursuant to the provisions of Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(b) That in the event SBA does not award a subcontract for all or a part of the work hereunder, this contract may be terminated, either in whole or in part, without cost to either party.

(c) Delegates to the Department of the Army, U.S. Army Engineer District, Buffalo (hereinafter called the "Buffalo District") the responsibility for administering the subcontract to be awarded hereunder, with complete authority to take any action on behalf of the Government under the terms and conditions of the subcontract; provided, however, that the Buffalo District shall give advance notice to the SBA before it issues a final notice terminating the right of a subcontractor to proceed with further performance, either in whole or in part, under the subcontract for default or for the convenience of the Government.

(d) That payments to be made under any subcontract awarded under this contract will be made directly to the subcontractor by the Buffalo District.

(e) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the Contracting Officer, cognizable under the "Disputes" clause of said subcontract.

A copy of the acceptance document and a copy of the final payment document will be provided to SBA.

2. SPECIAL 8(a) SUBCONTRACT CONDITIONS (SEP 1989) FAR 52.219-12

(a) The Small Business Administration (SBA) has entered into Contract No. W912P4-04-C-00 with the Buffalo District to furnish the supplies and services as described herein.

(b) Union City Contractors, Inc. hereafter referred to as the subcontractor, agrees and acknowledges as follows:

(1) That it will, for and on behalf of the SBA, fulfill and perform all of the requirements of Contract No. W912P4-04-C-00 for the consideration stated herein and that it has read and is familiar with each and every part of the contract.

(2) That the SBA has delegated responsibility for the administration of this subcontract to the Buffalo District with complete authority to take any action on behalf of the Government under the terms and conditions of this subcontract.

(3) That it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the designated Contracting Officer of the Buffalo District.

(c) Payments, including any progress payments under this subcontract, will be made directly to the subcontractor by the USACE Finance Center, Millington, TN.

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SECTION 00100
BIDDING SCHEDULE/INSTRUCTIONS TO BIDDERS

1 PROPOSAL DEPOSITORY

Hand carried offers must be deposited, prior to the date set for opening of proposals, in the offer depository, Contracting Division, Building No. 1, 1st Floor, Department of the Army, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199.

2 PLACE OF PROPOSAL OPENING

Offers shall be opened in the Contracting Division, Building No. 1, 1st Floor, Department of the Army, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199.

3 INQUIRIES

For information regarding this Procurement, write or call (Collect calls not accepted) Mr. Richard W. Reffner, Department of the Army, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199 - Area Code 716 - Telephone Number 879-4250.

4 WORK PERFORMED BY CONTRACTOR

The successful bidder/offeror must furnish the Contracting Officer within five (5) days after the award, the items of work, which he will perform with his own forces, the percentage of the total work this represents, and the estimated cost thereof. (See Section 00800, Special Contract Requirement entitled "Limitations on Subcontracting").

5 GOVERNMENT'S PRIVILEGE IN MAKING AWARDS

The Government further reserves the right to make award of any or all schedules of any bid/offer, unless the bidder/offeror qualifies such bid/offer by specific limitation; also to make award to the bidder/offeror whose aggregate bid/offer on any combination of bid schedules is low.

6 52.216-1 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a Firm Fixed-Price contract resulting from this solicitation.

(End of clause)

7 252.219-7009 SECTION 8(a) DIRECT AWARD (JUN 1998)

- (a) This contract is issued as a direct award between the contracting office and the 8(a) Contractor pursuant to the Memorandum of Understanding dated May 6, 1998, between the Small Business Administration (SBA) and the Department of Defense. Accordingly, the SBA is not a party to this contract. SBA does retain responsibility for 8(a) certification, for 8(a) eligibility determinations and related issues, and for providing counseling and assistance to the 8(a) Contractor under the 8(a) Program. The cognizant SBA district office is: Small Business Administration Buffalo, NY
- (b) The contracting office is responsible for administering the contract and for taking any action on behalf of the Government under the terms and conditions of the contract; provided that the contracting office shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting office also shall coordinate with the SBA prior to processing any novation agreement. The contracting office may assign contract administration functions to a contract administration office.
- (c) The Contractor agrees that-
 - (1) It will notify the Contracting Officer, simultaneous with its notification to the SBA (as required by SBA's 8(a) regulations at 13 CFR 124.308), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with Section 407 of Pub. L. 100-656, transfer of ownership or control shall result in termination of the contract for convenience, unless the SBA waives the requirement for termination prior to the actual relinquishing of ownership and control; and
 - (2) It will not subcontract the performance of any of the requirements of this contract without the prior written approval of the SBA and the Contracting Officer.

(End of clause)

8 52.228-1 BID GUARANTEE (SEP 1996)

(a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(b) The bidder shall furnish a bid guarantee in the form of a firm commitment, e.g., bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds, (1) to unsuccessful bidders as soon as practicable after the opening of bids, and (2) to the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.

© The amount of the bid guarantee shall be 20% percent of the bid price or \$3,000,000.00, whichever is less.

(d) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.

(e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

(c) **Mechanisms for EFT payment.** The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

- (d) Suspension of payment. If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.
- (e) Contractor EFT arrangements. If the Contractor has identified multiple payment receiving points (i.e., more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.
- (f) Liability for uncompleted or erroneous transfers. (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for—
 - (i) Making a correct payment;
 - (ii) Paying any prompt payment penalty due; and
 - (iii) Recovering any erroneously directed funds.(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—
 - (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
 - (ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.
- (g) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.
- (h) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register in the CCR database and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.
- (i) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.
- (j) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or

method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

(End of Clause)

11 AMENDMENTS PRIOR TO DATE SET FOR OPENING BIDS FAR 14.208

The right is reserved, as the interest of the Government may require, to revise or amend the specifications or drawings or both prior to the date set for opening bids. Such revisions and amendments, if any, will be announced by an amendment or amendments to this Solicitation. If the revisions and amendments are of a nature which require material changes in quantities or prices offered or both, the date set for opening proposals may be postponed by such number of days as in the opinion of the issuing officer will enable offerors to revise their offers. In such cases, the amendment will include an announcement of the new date for opening of proposals.

12 ARITHMETIC DISCREPANCIES EFARS 14.406-2

- (a) For the purpose of initial evaluation of bids, the following will be utilized in resolving arithmetic discrepancies found on the face of the bidding schedule as submitted by bidders:
 - (1) Obviously misplaced decimal points will be corrected;
 - (2) In case of discrepancy between unit price and extended price;
 - (3) Apparent errors in extension of unit prices will be corrected;
 - (4) Apparent errors in addition of lump-sum and extended prices will be corrected.
- (b) For the purpose of bid evaluation, the government will proceed on the assumption that the bidder intends his bid to be evaluated on the basis of the unit prices, the totals arrived at by resolution of arithmetic discrepancies as provided above and the bid will be so reflected on the abstract of bids.

13 BID MODIFICATION

If a modification to a bid based on unit prices is submitted, which provides for a lump sum adjustment to the total estimated cost, the application of the lump sum adjustment to each unit price in the bid schedule must be stated. If it is not stated, the bidder agrees that the lump sum adjustment shall be applied on a pro-rata basis to every unit price in the bid schedule.

14 BIDDER'S QUALIFICATIONS FAR 9.105-1

Before an offer is considered for award, the offeror may be requested by the Government to submit a statement regarding his previous experience in performing comparable work, his business and technical organization, financial resources, and plant available to be used in performing the work.

15 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE

Whenever a contract or modification of contract price is negotiated, the Contractor's cost proposals for equipment ownership and operating expenses shall be determined in accordance with the requirements of the paragraph entitled "EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE," contained in the Special Contract Requirements section of the specifications. A copy of EP 1110-1-8 "Construction Equipment Ownership and Operating Expense Schedule" is available for review at the Department of the Army, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199; Foot of East 9th Street, Cleveland, OH 44114, and Summit Street, Bay View Park, Toledo, OH 43611.

(End of Clause)
(EFARS 52.2/9108(f)(a))

16 INVOICES (NY/PA AREA OFFICE)

Invoices shall be submitted in quadruplicate to the following:

Mr. David Bingert
Department of the Army
U.S. Army Engineer District, Buffalo
NY/PA Area Office
1776 Niagara Street
Buffalo, NY 14207-3199

17 LIST OF ATTACHMENTS

1. Preparatory Inspection Checklist
2. Initial Inspection Checklist
3. Construction Quality Control Report
4. Standard Form 24, "Bid Bond" (Sample)
5. Standard Form 25, "Performance Bond" (Sample)
6. Standard Form 25-A, "Payment Bond" (Sample)
7. ENG Form 4025, "Transmittal of Shop Drawings, Equipment Data, Material Samples, or Manufacturer's Certificates of Compliance for Approval"
8. Submittal Register
9. General Wage Decision Number PA030004
10. General Wage Decision Number IL030018
11. Contractor Accident Prevention Plan Checklist
12. Sample Accident Prevention Plan Template
13. EM 385-1-1, US Army Corps of Engineers Safety and Health Requirements Manual
14. Presque Isle State Park – General Location Map
15. Contractor Quality Control Plan Checklist
16. Contractor Quality Control Plan Template
17. Environmental Protection Plan Template
18. Presque Isle Breakwaters
19. Presque Isle Horizontal Control Points and Bench Marks

These attachments are located at the end of this Solicitation.

18 PRE-CONSTRUCTION CONFERENCE (FEB 1995)

After award of a contract, a Pre-construction Conference will be conducted between responsible personnel of the Contractor, Area Office and District Office to discuss Government procedures and line authority for contractual, administrative, and construction matters. The successful Contractor will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

19 SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

This solicitation and its resultant contract are issued under the Small Business Competitiveness Demonstration Program of the Business Opportunity Development Reform Act of 1988.

20 SYNOPSIS OF SUBCONTRACT OPPORTUNITIES FAR 5.206(b)

Prime contractors and subcontractors are encouraged to use the Government wide Point of Entry (GPE) to publicize opportunities in the field of subcontracting stemming from defense business.

Transmittal of a synopsis are accomplished in the following manner:

GPE. Transmission must be in accordance with the interface description available via the Internet at <http://www.fedbizopps.gov>.

CBD. All synopses transmitted electronically to the CBD, other than through the GPE, must be in ASCII Code.

(c) Hard copy transmission. When electronic transmission if not feasible, synopses should be sent to the CBD via mail or other physical delivery of hard copy and should be addressed to the—

Commerce Business Daily
U.S. Department of Commerce
P. O. Box 77880
Washington, DC 20013-8880

21 WAGE DETERMINATION (Construction)

- (a) The Department of Labor Wage Determination Decision referred to in Section 00700 - Contract Clauses of the solicitation is attached hereto and made a part hereof, Decision No. NY03000, and all amendments thereto.
- (b) Classifications and rates applicable to this work are those used in the local area in the performance of Heavy and Highway construction.

22 252.204-7004 REQUIRED CENTRAL CONTRACTOR REGISTRATION (MAR 2000)

(a) Definitions.

As used in this clause—

- (1) Central Contractor Registration (CCR) database means the primary DoD repository for contractor information required for the conduct of business with DoD.
- (2) Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet Information Services to identify unique business entities.
- (3) Data Universal Numbering System +4 (DUNS+4) number means the DUNS number assigned by Dun and Bradstreet plus a 4-digit suffix that may be assigned by a parent (controlling) business concern. This 4-digit suffix may be assigned at the discretion of the parent business concern for such purposes as identifying subunits or affiliates of the parent business concern.
- (4) Registered in the CCR database means that all mandatory information, including the DUNS number or the DUNS+4 number, if applicable, and the corresponding Commercial and Government Entity (CAGE) code, is in the CCR database; the DUNS number and the CAGE code have been validated; and all edits have been successfully completed.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee must be registered in the CCR database prior to award, during performance, and through final payment of any contract resulting from this solicitation, except for awards to foreign vendors for work to be performed outside the United States.

- (2) The offeror shall provide its DUNS or, if applicable, its DUNS+4 number with its offer, which will be used by the Contracting Officer to verify that the offeror is registered in the CCR database.
- (3) Lack of registration in the CCR database will make an offeror ineligible for award.
- (4) DoD has established a goal of registering an applicant in the CCR database within 48 hours after receipt of a complete and accurate application via the Internet. However, registration of an applicant submitting an application through a method other than the Internet may take up to 30 days. Therefore, offerors that are not registered should consider applying for registration immediately upon receipt of this solicitation.

(c) The Contractor is responsible for the accuracy and completeness of the data within the CCR, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to confirm on an annual basis that its information in the CCR database is accurate and complete.

(d) Offerors and contractors may obtain information on registration and annual confirmation requirements by calling 1-888-227-2423, or via the Internet at <http://www.ccr2000.com>.

(End of clause)

23 REQUIRED INSURANCE FAR 28.307-2 ce with the Contract Clause entitled "Insurance - Work on a Government Installation", the Contractor shall procure and maintain during the entire period of his performance under this contract the following minimum insurance:

TYPE	AMOUNT
------	--------

Public Liability

- | | |
|------------------------------|--------------|
| (1) Bodily Injury Per Person | \$ 500,000. |
| (2) Per Occurrence | \$1,000,000. |

Property Damage

(1) Per Accident	\$1,000,000.
(2) Per Incident	\$1,000,000.

Auto Liability

(1) Bodily Injury Per Person	\$ 500,000.
(2) Per Occurrence	\$1,000,000.

Auto Property Damage

(1) Per Occurrence	\$ 500,000.
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(b) Prior to the commencement of work hereunder, the Contractor shall furnish to the Contracting Officer a certificate or written statement of the above required insurance. The policies evidencing required insurance shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interest of the Government in such insurance shall not be effective until thirty (30) days after notice thereof to the Contracting Officer.

(c) The Contractor agrees to insert the substance of this clause, including this paragraph (c) in all subcontracts hereunder.

24 COMPLETION OF BID SCHEDULE

OFFER MUST BE SUBMITTED ON ALL ITEMS OF THE BIDDING SCHEDULES.

25 REAL ESTATE

(a) Real Estate Rights. Rights for the use of the work areas under the contract have been provided, and the general limits of the areas are shown on the contract drawings. Conformance to all applicable requirements of the agreement is required. Copies of the agreements are available for inspection at the Department of the Army, US Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207-3199. Two copies of each agreement will be furnished to the Contractor awarded the contract work.

Additional Real Estate Rights. Any additional real estate rights desired by the Contractor, shall be obtained by the Contractor, at his own expense. Copies of any such agreements shall be furnished to the Contracting Officer for approval before entering thereon. Such agreements shall clearly relieve the US Government of any responsibility for damages resulting from the use of such real estate.

26 52.217-5 EVALUATION OF OPTIONS

Except when it is determined in accordance with FAR [17.206\(b\)](#) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

27 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT

- (a) The Government may extend the term of this contract by written notice to the Contractor within 30 calendar days prior to the end of the contract; provided, that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.
- (b) If the Government exercises this option, the extended contract shall be considered to include this option clause.
- (c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 36 months.

28 EXERCISE OF OPTION (EXTENSION OF CONTRACT)

- (a) The extension of the contract under the option(s), if exercised shall be for a duration of one (1) year each.
- (b) Such option shall be exercised thirty (30) days prior to the expiration of the current contract.

29 52.232-19 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR

Funds are not presently available for performance under this contract beyond FY 2004. The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond September 30, 2004, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

30 SERVICE OF PROTEST

- (a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from _____. [*Contracting Officer designate the official or location where a protest may be served on the Contracting Officer.*]
- (b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

31 PRE-BID CONFERENCE

A pre-Bid Conference will be held for the purpose of providing bidders an opportunity to attend a briefing and to submit written questions concerning the requirements of this contract. Bidders shall submit their intention to attend the Pre-Bid Conference in writing or by FAX (FAX Number 716-879-4353) to the Chief, Contracting Division. The Pre-Bid Conference will be held

at the Mount Morris Dam, 6103 Visitor Center Road, Mount Morris, Now York, on April 21, 2004 at 10:00 AM.

32 **FEDERAL ACQUISITION REGULATION (FAR) AND DEFENSE ACQUISITION REGULATION SUPPLEMENT (DFARS) CLAUSES INCORPORATED BY REFERENCE**

Federal Acquisition Regulation (FAR) clauses and Defense Acquisition Regulation Supplement (DFARS) clauses incorporated in this solicitation "BY REFERENCE" may be found on the internet at <http://www.acq.osd.mil/dp/dars/>.

33 **52.252-2 CLAUSES INCORPORATED BY REFERENCE**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(s): <http://www.arnet.gov/far/>

52.204-6	Data Universal Numbering System (DUNS) Number	OCT 2003
252.204-7001	Commercial and Government Entity (CAGE) Code Reporting	AUG 1999
252.204-7004	Required Central Contractor Registration	NOV 2001
52.211-2	Availability of Specifications Listed in the DoD Index of Specifications and Standards (DODISS) and Descriptions Listed in the Acquisition Management Systems and Data Requirements Control List, DoD 5010.12-L	DEC 2003
52.214-3	Amendments to Invitations for Bids	DEC 1989
52.214-4	False Statements in Bids	APR 1984
52.214-5	Submission of Bids	MAR 1997
52.214-6	Explanation to Prospective Bidders	APR 1984
52.214-7	Late Submissions, Modifications, and Withdrawals of Bids	NOV 1999
52.214-18	Preparation of Bids - Construction	APR 1984
52.214-19	Contract Award - Sealed Bidding Construction	AUG 1996
52.216-1	Type of Contract	APR 1984
252.219-7003	Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts)	APR 1996
52.222-23	Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction	FEB 1999
52.228-1	Bid Guarantee	SEP 1996
52.228-11	Pledges of Assets	FEB 1992
52.232-33	Payment by Electronic Funds Transfer -- Central Contractor Registration	OCT 2003
252.236-7000	Modification Proposals - Price Breakdown	DEC 1991
252.236-7008	Contract Prices - Bidding Schedules	DEC 1991

(End of Clause)

SECTION 00600
REPRESENTATIONS & CERTIFICATIONS

1	52.203-2	CERTIFICATE OF INDEPENDENT PRICE DETERMINATION
2	52.203-11	CERTIFICATION AND DISCLOSURE REGARDING PAYMENT TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS
3	52.204-3	TAXPAYER IDENTIFICATION
4	52.209-5	CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS
5	252.209-7001	DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT\ OF A TERRORIST COUNTRY
6	52.219-1	SMALL BUSINESS PROGRAM REPRESENTATIONS
7	52.219-19	SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM
8	52.222-22	PREVIOUS CONTRACTS AND COMPLIANCE REPORTS
9	52.222-38	COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS
10	52.225-2	BUY AMERICAN ACT--BALANCE OF PAYMENTS PROGRAM CERTIFICATE
11	52.236-28	PREPARATION OF PROPOSALS--CONSTRUCTION
12		AUTHORIZED NEGOTIATORS
13		REMIT TO ADDRESS

SECTION 00600
REPRESENTATIONS & CERTIFICATIONS

1 52.203-2 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)

(a) The offeror certifies that --

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods of factors used to calculate the prices offered:

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory --

(1) Is the person in the offeror's organization responsible for determining the prices offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contradictory to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as an agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above

_____ (insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization);

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(End of clause)

2 52.203-11 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO
INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989--

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan,

the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(End of provision)

3 52.204-3 TAXPAYER IDENTIFICATION (OCT 1998)

(a) Definitions.

Common parent, as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

Taxpayer Identification Number (TIN), as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) Taxpayer Identification Number (TIN).

___ TIN:.....

___ TIN has been applied for.

___ TIN is not required because:

___ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

___ Offeror is an agency or instrumentality of a foreign government;

___ Offeror is an agency or instrumentality of the Federal Government.

(e) Type of organization.

___ Sole proprietorship;

___ Partnership;

___ Corporate entity (not tax-exempt);

___ Corporate entity (tax-exempt);

___ Government entity (Federal, State, or local);

___ Foreign government;

___ International organization per 26 CFR 1.6049-4;

___ Other-----

(f) Common parent.

___ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.

___ Name and TIN of common parent:

Name-----

TIN-----

(End of provision)

4 52.209-5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that--

(i) The Offeror and/or any of its Principals--

(A) Are / / are not / / presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have / / have not / / , within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers;

or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are / / are not / / presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

(ii) The Offeror has / / has not / /, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror non-responsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

5 252.209-7001 DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)

(a) "Definitions."

As used in this provision --

(a) "Government of a terrorist country" includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) "Terrorist country" means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for such acts of international terrorism. As of the date of this provision, terrorist countries include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) "Significant interest" means --

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in

"nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

- (ii) Holding a management position in the firm, such as a director or officer;
 - (iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;
 - (iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or
 - (v) Holding 50 percent or more of the indebtedness of a firm.
- (b) "Prohibition on award."

In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary or, in the case of a subsidiary, the firm that owns the subsidiary, unless, a waiver is granted by the Secretary of Defense.

(c) "Disclosure."

If the government of a terrorist country has a significant interest in the Offeror or a subsidiary of the Offeror, the Offeror shall disclose such interest in an attachment to its offer. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include --

- (1) Identification of each government holding a significant interest; and
 - (2) A description of the significant interest held by each government.
- (End of provision)

6 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (OCT 2000)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is 237990.

(2) The small business size standard is \$27.5 million.

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) Representations. (1) The offeror represents as part of its offer that it / / is, / / is not a small business concern.

(2) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, for general statistical purposes, that it / / is, / / is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents as part of its offer that it / / is, / / is not a women-owned small business concern.

(4) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents as part of its offer that it / / is, / / is not a veteran-owned small business concern.

(5) [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.] The offeror represents as part of its offer that it / / is, / / is not a service-disabled veteran-owned small business concern.

(c) Definitions. As used in this provision--

"Service-disabled veteran-owned small business concern"--

(1) Means a small business concern--

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (a) of this provision.

"Veteran-owned small business concern" means a small business concern--

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern--

(1) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Notice. (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall--

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(6) [Complete only if offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, as part of its offer, that--

(i) It / / is, / / is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office of ownership,

or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR Part 126; and

(ii) It / / is, / / is not a joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (b)(6)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(7) [Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision.] The offeror shall check the category in which its ownership falls:

_____ Black American.

_____ Hispanic American.

_____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

_____ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

_____ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

_____ Individual/concern, other than one of the preceding.

7 52.219-19 SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (OCT 2000)

(a) Definition. "Emerging small business" as used in this solicitation, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the North American Industry Classification System (NAICS) code assigned to a contracting opportunity.

(b) [Complete only if the Offeror has represented itself under the provision at 52.219-1 as a small business concern under the size standards of this solicitation.] The Offeror / / is, / / is not an emerging small business.

(c) [Complete only if the Offeror is a small business or an emerging small business, indicating its size range.] Offeror's number of employees for the past 12 months [check this column if size standard stated in solicitation is expressed in terms of number of employees] or Offeror's average annual gross revenue for the last 3 fiscal years [check this column if size standard stated in solicitation is expressed in terms of annual receipts]. [Check one of the following.]

No. of Employees Avg. Annual Gross Revenues

_____ 50 or fewer _____ \$1 million or less

_____ 51 - 100 _____ \$1,000,001 - \$2 million

___ 101 - 250	___ \$2,000,001 - \$3.5 million
___ 251 - 500	___ \$3,500,001 - \$5 million
___ 501 - 750	___ \$5,000,001 - \$10 million
___ 751 - 1,000	___ \$10,000,001 - \$17 million
___ Over 1,000	___ Over \$17 million

(End of provision)

8 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

The offeror represents that –

- (a) / / It has, / / has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;
 - (b) / / It has, / / has not, filed all required compliance reports; and
 - (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.
- (End of provision)

9 52.222-38 COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (DEC 2001)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (i.e., if it has any contract containing Federal Acquisition Regulation clause 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans), it has submitted the most recent VETS-100 Report required by that clause.

(End of provision)

10 52.225-2 BUY AMERICAN ACT--BALANCE OF PAYMENTS PROGRAM CERTIFICATE (FEB 2000)

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product as defined in the clause of this solicitation entitled "Buy American Act-Balance of Payments Program-Supplies" and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(b) Foreign End Products:

Line Item No.	Country of Origin:

[List as necessary]

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

(End of Provision)

11 52.236-28 PREPARATION OF PROPOSALS--CONSTRUCTION

(a) Proposals must be (1) submitted on the forms furnished by the Government or on copies of those forms; and (2) manually signed. The person signing a proposal must initial each erasure or change appearing on any proposal form.

(b) The proposal form may require offerors to submit proposed prices for one or more items on various bases, including--

- (1) Lump sum price;
- (2) Alternate prices;
- (3) Units of construction; or
- (4) Any combination of paragraphs (b)(1) through (b)(3) of this provision.

(c) If the solicitation requires submission of a proposal on all items, failure to do so may result in the proposal being rejected without further consideration. If a proposal on all items is not required, offerors should insert the words "no proposal" in the space provided for any item on which no price is submitted.

(d) Alternate proposals will not be considered unless this solicitation authorizes their submission.

(End of provision)

12 AUTHORIZED NEGOTIATORS

The offeror or quoter represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposals or quotations:

Name	Title	Telephone Number
_____	_____	_____
_____	_____	_____
_____	_____	_____

[List names, titles, and telephone numbers of the authorized negotiators].

13 REMIT TO ADDRESS

The bidder/offeror shall insert below the address to which all contract payments shall be mailed.

The Contractor shall notify the Contracting Officer, in writing, of any change to this address. A contract modification will be required.

In accordance with the "Prompt Payment" clause of this contract, any invoice which, specifies a payment address differing from that shown above, will be returned without action.

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SECTION 00700
CONTRACT CLAUSES

1 252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)

(a) Definition. "Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

(End of Clause)

2 DEFINITIONS (JUL 1989) (DEVIATION) EFARS 52.202-10001

(a) The term "head of the agency" or "Secretary" as used herein means the Secretary of the Army; and the term "his duly authorized representative" means the Chief of Engineers, Department of the Army, or an individual or board designated by him.

(b) The agency board of contract appeals having jurisdiction over all appeals from final decisions of the Contracting Officer under the Contract Disputes Act of 1978 is the Corps of Engineers Board of Contract Appeals, Office of the Chief of Engineers, Pulaski Building, 20 Massachusetts Avenue, N.W., Washington, D.C. 20314-1000.

3 52.203-5 COVENANT AGAINST CONTINGENT FEES (AP4 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of Clause)

4 52.225-9 BUY AMERICAN ACT-CONSTRUCTION MATERIALS (MAY 2002)

(a) *Definitions.* As used in this clause-

"Component" means an article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site pre-assembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

"Cost of components" means-

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic construction material" means-

(1) An un-manufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which non-availability determinations have been made are treated as domestic.

"Foreign construction material" means a construction material other than a domestic construction material.

"United States" means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) *Domestic preference.*

(1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to the construction material or components listed by the Government as follows:

None

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that-

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) *Request for determination of inapplicability of the Buy American Act*

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including-

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer

will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison				
<u>Construction Material Description</u>	<u>Unit of Measure</u>	<u>Quantity</u>	<u>Price (Dollars)*</u>	
<i>Item 1:</i>				
Foreign construction material	_____	_____	_____	
Domestic construction material	_____	_____	_____	
<i>Item 2:</i>				
Foreign construction material	_____	_____	_____	
Domestic construction material				
<p>[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]</p> <p>[Include other applicable supporting information.]</p> <p>[* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]</p>				

5 52.232-27 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (MAY 1997)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in section 32.902 of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see subparagraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) Invoice Payments.

(1) Types of invoice payments. For purposes of this clause, there are several types of invoice payments that may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project:

(A) The due date for making such payments shall be 14 days after receipt of the payment request by the designated billing office. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date shall be the 14th day after the date of the Contractor's payment request, provided a proper payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, shall be as specified in the contract or, if not specified, 30 days after approval for release to the Contractor by the Contracting Officer.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract):

(A) The due date for making such payments shall be either the 30th day after receipt by the designated billing office of a proper invoice from the Contractor, or the 30th day after Government acceptance of the work or services completed by the Contractor, whichever is later. If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(2) Contractor's invoice. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions (a)(2)(i) through (a)(2)(ix) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice, with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the Contractor in the manner described in subparagraph (a)(4) of this clause.

(i) Name and address of the Contractor.

(ii) Invoice date. (The Contractor is encouraged to date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (e.g., prompt payment discount terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(viii) For payments described in subdivision (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.

(ix) Any other information or documentation required by the contract.

(x) While not required, the Contractor is strongly encouraged to assign an identification number to each invoice.

(3) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) Computing penalty amount. The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph (a)(2) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in subdivision (a)(1)(ii) of this clause, Government acceptance or approval shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days.

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of the contract.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(5) Prompt payment discounts. An interest penalty also shall be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(6) Additional interest penalty.

(i) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with subdivision (a)(6)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor--

(A) Is owed an interest penalty of \$1 or more;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid;

and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with subdivision (a)(6)(ii) of this clause, postmarked not later than 40 days after the date the invoice amount is paid.

(ii) (A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall--

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(1) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) Demands must be postmarked on or before the 40th day after payment was made, except that--

(1) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or

(2) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(iii) (A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty that is due on or after January 22, 1990, except--

(1) For additional penalties due on or before January 22, 1992, such penalties shall not exceed \$2,500;

(2) After January 22, 1992, the additional penalty shall not exceed \$5,000;

(3) The additional penalty shall never be less than \$25; and

(4) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision (a)(4)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(6)(iii)(A) of this clause.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) Contract financing payments.

(1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the 30th day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) Subcontract clause requirements. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) Interest for subcontractors. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause--

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) Subcontractor clause flowdown. A clause requiring each subcontractor to include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs (c)(1) and (c)(2) of this clause in each of its subcontracts, and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) Subcontract clause interpretation. The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that--

(1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if--

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) A copy of any notice issued by a Contractor pursuant to subdivision (d)(3)(i) of this clause has been furnished to the Contracting Officer.

(e) Subcontractor withholding procedures. If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall--

(1) Subcontractor notice. Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Contracting Officer notice. Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to subparagraph (e)(1) of this clause;

(3) Subcontractor progress payment reduction. Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (e)(1) of this clause;

(4) Subsequent subcontractor payment. Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and--

(i) Make such payment within--

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under subdivision (e)(5)(i)) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notice to Contracting Officer. Notify the Contracting Officer upon--

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying--

(A) The amounts withheld under subparagraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) Interest to Government. Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the Government until--

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under subdivision (e)(5)(i) of this clause.

(f) Third-party deficiency reports.

(1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under subparagraph (e)(6) of this clause--

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subdivision (f)(1)(i) of this clause.

(2) Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall--

(i) Pay the amount withheld under subdivision (f)(1)(ii) of this clause to such first-tier subcontractor, or

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) Written notice of subcontractor withholding. A written notice of any withholding shall be issued to a subcontractor (with a copy to the Contracting Officer of any such notice issued by the Contractor), specifying--

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) Subcontractor payment entitlement. The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the subcontractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the United States is a party. The United States may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) Preservation of prime-subcontractor rights. Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the United States for such interest penalty. A cost reimbursement claim may not include any amount for reimbursement of such interest penalty.

(End of clause)

6 52.211-18 VARIATION IN ESTIMATED QUANTITY (APR 1984)

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of the Contracting Officer, is justified.

(End of Clause)

7 52.219-17 SECTION 8(a) AWARD (DEC 1996)

(a) By execution of a contract, the Small Business Administration (SBA) agrees to the following:

(1) To furnish the supplies or services set forth in the contract according to the specifications and the terms and conditions by subcontracting with the Offeror who has been determined

an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(2) Except for novation agreements and advance payments, delegates to the Department of the Army, US Army Corps of Engineers, Buffalo District the responsibility for administering the contract with complete authority to take any action on behalf of the Government under the terms and conditions of the contract; *provided*, however that the contracting agency shall give advance notice to the SBA before it issues a final notice terminating the right of the subcontractor to proceed with further performance, either in whole or in part, under the contract.

(3) That payments to be made under the contract will be made directly to the subcontractor by the contracting activity.

(4) To notify the Department of the Army, US Army Corps of Engineers, Buffalo District Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

(5) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the cognizant Contracting Officer under the "Disputes" clause of the subcontract.

(b) The offeror/subcontractor agrees and acknowledges that it will, for and on behalf of the SBA, fulfill and perform all of the requirements of the contract.

(c) The offeror/subcontractor agrees that it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the cognizant Contracting Officer of the Department of the Army, US Army Corps of Engineers, Buffalo District.

8 52.236-15 SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that maybe required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

(End of clause)

9 AUTHORIZED DEVIATIONS IN CLAUSES

The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the date of the clause.

10 BASIS FOR SETTLEMENT OF PROPOSALS EFARS 49.113(100)

Actual costs will be used to determine equipment cost for a settlement proposal submitted on the total cost basis under FAR 49.206-2(b). In evaluating a termination settlement proposal using the total cost basis, the following principles will be applied to determine allowable equipment costs:

(1) Actual costs for each piece of equipment, or groups of similar serial or series equipment, need not be available in the contractor's accounting records to determine total actual equipment costs.

(2) If equipment costs have been allocated to a contract using predetermined rates, those charges will be adjusted to actual costs.

(3) Recorded job costs adjusted for unallowable and unallocable expenses will be used to determine equipment operating expenses.

(4) Ownership costs (depreciation) will be determined using the contractor's depreciation schedule (subject to the provisions of FAR 31.205-11).

(5) License, taxes, storage and insurance costs are normally recovered as an indirect expense and unless the contractor charges these costs directly to contracts, they will be recovered through the indirect expense rate.

11 ENVIRONMENTAL LITIGATION (1974 NOV OCE)

(a) If the performance of all or any part of the work is suspended, delayed, or interrupted due to an order of a court of competent jurisdiction as a result of environmental litigation, as defined below, the Contracting Officer, at the request of the Contractor, shall determine whether the order is due in any part to the acts or omissions of the Contractor or a Subcontractor at any tier not required by the terms of this contract. If it is determined that the order is not due in any part to acts or omissions of the Contractor or a Subcontractor at any tier other than as required by the terms of this contract, such suspension, delay, or interruption shall be considered as if ordered by the Contracting Officer in the administration of this contract under the terms of the “Suspension of Work” clause of this contract. The period of such suspension, delay or interruption shall be considered unreasonable, and an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) as provided in that clause, subject to all the provisions thereof.

(b) The term “environmental litigation”, as used herein, means a lawsuit alleging that the work will have an adverse effect on the environment or that the Government has not duly considered, either substantively or procedurally, the effect of the work on the environment.

(End of Clause)

(EFARS 52.2/9109(i))

12 FINAL EXAMINATION AND ACCEPTANCE (1965 APR OCE)

(a) As soon as practicable after the completion of the entire work or any section thereof (if the work is divided into sections) as in the opinion of the Contracting Officer will not be subject to damage by further operations under the contract, such work will be thoroughly examined at the cost and expense of the Government by sounding or by sweeping, or both, as determined by the Contracting Officer. Should any

shoals, lumps, or other lack of contract depth be disclosed by this examination the Contractor will be required to remove same by dragging the bottom or by dredging at the contract rate for dredging, but if the bottom is soft and the shoal areas are small and form no material obstruction to navigation, the removal of such shoal may be waived by the discretion of the Contracting Officer. The Contractor or his authorized representative will be notified when soundings and/or sweepings are to be made, and will be permitted to accompany the survey party. When the area is found to be in a satisfactory condition, it will be accepted finally. Should more than two sounding or sweeping operations by the Government over an area be necessary be reason of work for the removal of shoals disclosed at a prior sounding or sweeping, the cost of such third and any subsequent sounding or sweeping operations will be charged against the Contractor at the rate of \$1,500.00 per day for each day in which the Government plant is engaged in sounding or sweeping and/or is enroute to or from the site or held at or near the said site for such operations.

(b) Final acceptance of the whole or a part of the work and the deductions or corrections of deductions made thereon will not be reopened after having once been made, except on evidence of collusion, fraud, or obvious error, and the acceptance of a completed section shall not change the time of payment of the retained percentages of the whole or any part of the work.

(End of Clause)
(EFARS 52.2/9110(e))

13 252.243-7002 REQUESTS FOR EQUITABLE ADJUSTMENT (MAR 1998)

(a) The amount of any request for equitable adjustment to contract terms shall accurately reflect the contract adjustment for which the Contractor believes the Government is liable. The request shall include only costs for performing the change, and shall not include any costs that already have been reimbursed or that have been separately claimed. All indirect costs included in the request shall be properly allocable to the change in accordance with applicable acquisition regulations.

(b) In accordance with 10 U.S.C. 2410(a), any request for equitable adjustment to contract terms that exceeds the simplified acquisition threshold shall bear, at the time of submission, the following certificate executed by an individual authorized to certify the request on behalf of the Contractor: I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

(Official's Name)

(Title)

(c) The certification in paragraph (b) of this clause requires full disclosure of all relevant facts, including-

(1) Cost or pricing data if required in accordance with subsection 15.403-4 of the Federal Acquisition Regulation (FAR); and

(2) Information other than cost or pricing data, in accordance with subsection 15.403-3 of the FAR, including actual cost data and data to support any estimated costs, even if cost or pricing data are not required.

(d) The certification requirement in paragraph (b) of this clause does not apply to-

(1) Requests for routine contract payments; for example, requests for payment for accepted supplies and services, routine vouchers under a cost-reimbursement type contract, or progress payment invoices; or

(2) Final adjustments under an incentive provision of the contract.

(End of clause)

14 52.232-5 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS

(a) *Payment of price.* The Government shall pay the Contractor the contract price as provided in this contract.

(b) *Progress payments.* The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor's request for progress payments shall include the following substantiation:

(i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.

(ii) A listing of the amount included for work performed by each subcontractor under the contract.

(iii) A listing of the total amount of each subcontract under the contract.

(iv) A listing of the amounts previously paid to each such subcontractor under the contract.

(v) Additional supporting data in a form and detail required by the Contracting Officer.

(2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if-

(i) Consideration is specifically authorized by this contract; and

(ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) *Contractor certification.* Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

I hereby certify, to the best of my knowledge and belief, that-

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor's performance.

(Name)

(Title)

(Date)

(d) *Refund of unearned amounts.* If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall-

(1) Notify the Contracting Officer of such performance deficiency; and

(2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until-

(i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or

(ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) *Retainage*. If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(f) *Title, liability, and reservation of rights*. All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as-

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(g) *Reimbursement for bond premiums*. In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

(h) *Final payment*. The Government shall pay the amount due the Contractor under this contract after-

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(i) *Limitation because of undefinitized work*. Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(j) *Interest computation on unearned amounts*. In accordance with 31 U.S.C. 3903(c)(1), the amount payable under paragraph (d)(2) of this clause shall be-

(1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and

(2) Deducted from the next available payment to the Contractor.

(End of clause)

15 52.232-17 INTEREST

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(End of clause)

16. 52.252-2 CLAUSES INCORPORATED BY REFERENCE

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(s): <http://www.arnet.gov/far/>

52.203-3	Gratuities	APR 1984
52.203-7	Anti-Kickback Procedures	JUL 1995
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	JAN 1997
52.203-10	Price of Fee Adjustment for Illegal or Improper Activity	JAN 1997
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	JUN 1997
52.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense Contract-Related Felonies	MAR 1999
52.204-4	Printing/Copying Double-Sided on Recycled Paper	AUG2000
252.204-7003	Control of Government Personnel Work Product	APR 1992
52.209-6	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or proposed for Debarment	JUL 1995
52.214-26	Audit and Records--Sealed Bidding	OCT 1997
52.214-27	Price Reduction for Defective Cost or Pricing Data - Modifications Sealed Bidding	OCT 1997
52.214-28	Subcontracting Cost or Pricing Data--Modifications--Sealed Bidding	OCT 1997
52.214-29	Order of Precedence--Sealed Bidding	JAN 1986
52.219-8	Utilization of Small Business Concerns	OCT 1999
52.219-16	Liquidated Damages - Subcontracting Plan	JAN 1999
52.222-1	Notice to the Government of Labor Disputes	FEB 1997
52.222-3	Convict Labor	AUG 1996
52.222-4	Contract Work Hours and Safety Standards Act - Overtime Compensation	JUL 1995
52.222-6	Davis Bacon Act	FEB 1995
52.222-7	Withholding of Funds	FEB 1988
52.222-8	Payrolls and Basic Records	FEB 1988
52.222-9	Apprentices and Trainees	FEB 1988
52.222-10	Compliance with Copeland Act Requirements	FEB 1988
52.222-11	Subcontracts (Labor Standards)	FEB 1988

52.222-12	Contract Termination - Debarment	FEB 1988
52.222-13	Compliance with Davis-Bacon and Related Act Regulations	FEB 1988
52.222-14	Disputes Concerning Labor Standards	FEB 1988
52.222-15	Certifications of Eligibility	FEB 1988
52.222-21	Prohibition of Segregated Facilities	FEB 1999
52.222-26	Equal Opportunity	FEB 1999
52.222-27	Affirmative Action Compliance Requirements for Construction	FEB 1999
52.222-35	Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era	FEB 1999
52.222-36	Affirmative Action for Workers with Disabilities	JUN 1998
52.222-37	Employment Reports on Disabled Veterans and Veterans of the Vietnam Era	JAN 1999
52.233-1	Disputes	DEC 1998
52.233-3	Protest After Award	AUG 1996
52.236-2	Differing Site Conditions	APR 1984
52.236-3	Site Investigation and Conditions Affecting the Work	APR 1984
52.236-5	Material and Workmanship	APR 1984
52.236-6	Superintendence by the Contractor	APR 1984
52.236-7	Permits and Responsibilities	NOV 1991
52.236-8	Other Contracts	APR 1984
52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements	APR 1984
52.236-10	Operations and Storage Areas	APR 1984
52.236-11	Use and Possession Prior to Completion	APR 1984
52.236-12	Cleaning Up	APR 1984
52.236-13	Accident Prevention	NOV 1991
52.236-21	Specifications and Drawings for Construction	FEB 1997
252.236-7000	Modification Proposals - Price Breakdown	DEC 1991
52.242-13	Bankruptcy	JUL 1995
52.242-14	Suspension of Work	APR 1984
52.243-4	Changes	AUG 1987
252.243-7001	Pricing of Contract Modifications	DEC 1991
52.246-12	Inspection of Construction	AUG 1996
52.248-3 Alt I	Value Engineering - Construction (FEB 2000) - Alternate I	APR 1989
52.249-2 Alt I	Termination for Convenience of the Government (Fixed Price) Alt I	SEP 1996
52.249-10	Default (Fixed-Price Construction)	APR 1984
52.253-1	Computer Generated Forms	JAN 1991

SECTION 00800
SPECIAL CONTRACT REQUIREMENTS

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1 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK

2 52.211-12 LIQUIDATED DAMAGES--CONSTRUCTION (APR 1984)

(a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, the Contractor shall pay to the Government as liquidated damages, the sum of \$475.00 for each day of delay.

(b) If the Government terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If the Government does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

(End of clause)

3 52.219-14 LIMITATIONS ON SUBCONTRACTINGS (DEC 1996)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for--

(1) Services (except construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(2) Supplies (other than procurement from a nonmanufacturer of such supplies). The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(3) General construction. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) Construction by special trade contractors. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(End of clause)

4 252.236-7001 CONTRACT DRAWINGS, MAPS AND SPECIFICATIONS

(a) The CD-Rom disc furnished by the Government for solicitation of bids includes an electronic copy of the contract drawings, maps and specifications without charge except applicable publications incorporated into the specifications by reference. Large scale paper or mylar copies of the plans and paper copies of the specifications may be produced at the Contractor's expense from the CD-Rom. The work shall conform to the following contract drawings and maps, all of which form a part of the contractual documents.

Title	File	Drawing No.
CONTRACT DRAWINGS:		
Mount Morris Dam, Mount Morris, NY Debris Removal - Plan, Locality and Vicinity Maps	1/1	04-MMD-1/1
Mount Morris Dam, Mount Morris, NY Debris Removal - Sections and Pool Elevation Table	1/2	04-MMD-1/2

(b) Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

(c) The Contractor shall check all drawings furnished him immediately upon their receipt and shall promptly notify the Contracting Officer of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large scale drawings shall in general govern small scale drawings. The Contractor shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors which might have been avoided thereby.

(End of clause)

5 VARIATIONS IN ESTIMATED QUANTITIES—SUBDIVIDED ITEMS

The Variation in Estimated Quantities-Subdivided items clause is applicable only to Item Nos. 1, 2 and 3.

(a) Variation from the estimated quantity in the actual work performed under any second or subsequent sub-item or elimination of all work under such a second or subsequent sub-item will not be the basis for an adjustment in contract unit price.

(b) Where the actual quantity of work performed for Item Nos. 1, 2, and 3 is less than 85% of the quantity of the first sub-item listed under such item, the contractor will be paid at the contract unit price for that sub-item for the actual quantity of work performed and, in addition, an equitable adjustment shall be made in accordance with the clause FAR 52.211-18, Variation in Estimated Quantities.

(c) If the actual quantity of work performed under Item Nos. 1, 2, and 3 exceeds 115% or is less than 85% of the total estimated quantity of the sub-item under that item, and/or if the quantity of the work performed under the second sub-item or any subsequent sub-item under Item Nos. 1, 2, and 3 exceeds 115% or is less than 85% of the estimated quantity of any such sub-item, and if such variation causes an increase or a decrease in the time required for performance of this contract the contract completion time will be adjusted in accordance with the clause FAR 52.211-18, Variation in Estimated Quantities.

(End of clause)

6 52.3031-4105 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE SCHEDULE
EFARS 31.105(d)(2)(i)(A)

(a) Allowable cost for construction and marine plant and equipment in sound workable condition owned or controlled and furnished by a contractor or subcontractor at any tier shall be based on actual cost data for each piece of equipment or groups of similar serial and series for which the Government can determine both ownership and operating costs from the contractor's accounting records. When both ownership and operating costs cannot be determined for any piece of equipment or groups of similar serial or series equipment from the contractor's accounting records, costs for that equipment shall be based upon the applicable provisions of EP 1110-1-8, "Construction Equipment Ownership and Operating Expense Schedule," Region II. Working conditions shall be considered to be average for determining equipment rates using the schedule unless specified otherwise by the contracting officer. For equipment not included in the schedule, rates for comparable pieces of equipment may be used or a rate may be developed using the formula provided in the schedule. For forward pricing, the schedule in effect at the time of negotiations shall apply. For retrospective pricing, the schedule in effect at the time the work was performed shall apply.

(b) Equipment rental costs are allowable, subject to the provisions of FAR 31.105(d)(ii) and FAR 31.205-36 substantiated by certified copies of paid invoices. Rates for equipment rented from an organization under common control, lease-purchase or sale-leaseback arrangements will be determined using the schedule except that rental costs leased from an organization under common control that has an established practice of leasing the same or similar equipment to unaffiliated lessees are allowable. Costs for major repairs and overhaul are unallowable.

(c) When actual equipment costs are proposed and the total amount of the pricing action is over \$25,000, cost or pricing data shall be submitted on Standard Form 1411, "Contract Pricing Proposal Cover Sheet." By submitting cost or pricing data, the contractor grants to the contracting officer or an authorized representative the right to examine those books, records, documents and other supporting data that will permit evaluation of the proposed equipment costs. After price agreement the contractor shall certify that the equipment costs or pricing data submitted are accurate, complete and current.

(End of clause)

7 CERTIFICATES OF COMPLIANCE (1969 MAY OCE)

Any Certificates required for demonstrating proof of compliance of materials with specification requirements shall be executed in five (5) copies. Each certificate shall be signed by an official authorized to certify in behalf of the manufacturing company and shall contain the name and address of the Contractor, the project name and location, and the quantity and date or dates of shipment or delivery to which the certificates apply. Copies of laboratory test reports submitted with certificates shall contain the name and address of the testing laboratory and the date or dates of the tests to which the report applies. Certification shall not be construed as relieving the Contractor from furnishing satisfactory material, if, after tests are performed on selected samples, the material is found not to meet the specific requirements.

(End of Clause)

(EFARS 52.2/9108(c))

8

LAYOUT OF WORK (1965 APR OCE)

(a) The Government has established bench marks and horizontal control points at the site of the work. These are described and indicated on contract drawings.

(b) From these control points the contractor shall lay out the work by establishing all lines and grades at the site necessary to control the work and shall be responsible for all measurements that may be required for the execution of the work to the location and limit marks prescribed in the specifications or on the contract drawings. The Contractor shall establish and maintain at the site of the work the following horizontal and vertical controls:

See Specifications and Contract Drawings

The above are minimum requirements and the contractor shall place and establish such additional stakes and markers as may be necessary for control and guidance of his construction operations. All survey data shall be recorded in accordance with standard and approved methods. All field notes, sketches, recordings and computations made by the Contractor in establishing above horizontal and vertical control points shall be available at all times during the progress of the work for ready examination by the Contracting Officer or his duly authorized representative.

(c) The contractor shall furnish, at his own expense, all such stakes, spikes, steel pins, templates, platforms, equipment, tools and material and all labor as may be required in laying out any part of the work from the control points established by the Government. It shall be the responsibility of the contractor to maintain and preserve all stakes and other markers established by him until authorized to remove them. If any of the control points established at the site by the Government are destroyed by or through the negligence of the Contractor prior to their authorized removal, they may be replaced by the Contracting Officer, and the expense of replacement will be deducted from any amount due or which may become due the Contractor. The Contracting Officer may require that work be suspended at any time when horizontal and vertical control points established at the site by the Contractor are not reasonably adequate to permit checking the work. Such suspension will be withdrawn upon proper replacement of the control points.

(End of Clause)
(EFARS 52.2/9108(a)(b))

9

DAMAGE TO WORK (1966 MAR OCE)

The responsibility for damage to any part of the permanent work shall be as set forth in the clause of the contract entitled "Permits and Responsibilities". However, if, in the judgment of the Contracting Officer, any part of the permanent work performed by the Contractor is damaged by flood or earthquake, which damage is not due to the failure of the Contractor to take reasonable precautions or to exercise sound engineering and construction practices in the conduct of the work, the Contractor will make the repairs as ordered by the Contracting Officer and full compensation for such repairs will be made at the applicable contract unit or lump sum prices as fixed and established in the contract. If, in the opinion of the Contracting Officer, there are no contract unit or lump sum prices applicable to any part of such work an equitable adjustment pursuant to the Contract Clause entitled "Changes" of the contract, will be made as full compensation for the repairs of that part of the permanent work for which there are no applicable contract unit or lump sum prices. Except as herein provided damage to all work (including temporary

construction), utilities, materials, equipment and plant shall be repaired to the satisfaction of the Contracting Officer at the Contractor's expense, regardless of the cause of such damage.

(End of Clause)

(EFARS 52.2/9109(c)(d)(1))

10 52.236-4 PHYSICAL DATA (APR 1984)

Data and information furnished or referred to below is for the Contractor's information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

(a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations and historical data. The physical conditions shown on the drawings are indicative of those that prevailed at the time of the site investigations and may be different than those at the time of debris and silt removal operations. Significant variations that would require changes to the plans or specifications shall be reported to the Contracting Officer immediately.

(b) Weather Conditions. The Contractor shall investigate and satisfy himself as to all hazards likely to arise from weather conditions during the performance of the work. Climatological data may be obtained from the Department of Commerce, National Oceanic & Atmospheric Administration, National Weather Service for the Buffalo, NY Station located at the Buffalo Niagara International Airport.

(c) Transportation Facilities. The location is served by major highways. The Contractor shall investigate and obtain the necessary information and data as the availability and use of access roads and highways to the site of the work. The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary permits to operate on or cross public highways, roads in connection with the prosecution of the contract work. See the Contract Clause entitled "Permits and Responsibilities".

(d) Local Conditions. The site of the work is in the river gorge upstream of Mount Morris Dam. The difference in elevation between the top of the gorge and the reservoir bottom is approximately 300 feet. Access is by an existing haul road, as shown on the contract drawing.

(e) The Contractor is advised that the Mount Morris Dam is a flood control structure and the maintenance and operation of this structure is paramount. If weather and environmental conditions become such that emergency conditions exist, the Contractor will not be permitted to continue the operations until conditions improve. All dam operations will be coordinated by the Dam Superintendent.

(f) Pool Elevation. Subject to the availability of water in excess of minimum flows for power, the pool elevation will be raised to a maximum of 610.0, upon written request of the Contractor, once established, the pool elevation can usually be maintained within plus or minus one foot, except for sudden changes inflow, flow exceeding conduit capacity with all gates wide open, or flood control operational requirements. Requests for raising the pool elevation, shall be in writing and shall specify the desired elevation and time period. The lowest possible pool elevation is limited by the flood elevation of the conduit entrances, which are at EL. 585.0. All the conduit gates will be left open unless otherwise; 1) requested by the Contractor; 2) required for flood control; or 3) to minimize downstream turbidity.

(g) Inspection of the Work Area. The proposed work area may be inspected by the bidder at the work site during normal working hours from 8:00 AM to 4:00 PM, by calling the Dam Superintendent, Mr. Benjamin Mlodzinski, telephone number (585) 658-4220.

(End of clause)

11 ACCESS TO SITE

The work site is located west of the Village of Mount Morris, New York on the Genesee River. The haul road to the gorge is accessible from State Route 408 to Dam Site Road. Mount Morris Dam Road is not available for use. For project location and alternate access routes, refer to "Locality Map" on drawing sheet 1 of 2.

(End of clause)

12 SAFETY REQUIREMENTS

(a) General. Contract Clause entitled "Accident Prevention" of this contract requires compliance with all pertinent provisions of Corps of Engineers Manual, EM 385-1-1 dated 03 November 2003 entitled "Safety and Health Requirements Manual." Engineer Manual EM 385-1-1 can be accessed at <http://www.lrb.usace.army.mil/contracting/SafetyManual/SafetyManual.html>. The Contractor will be required to comply with OSHA standards and acquaint himself with any changes to those standards and the Corps of Engineers Safety and Health Requirements Manual (EM 385-1-1).

(b) Accident Prevention Plan. The Contractor's Accident Prevention Plan format shall be in accordance with Appendix A of the "Safety and Health Requirements Manual", EM 385-1-1. A sample Accident Prevention Plan template is included as an attachment to this solicitation. Additionally, the Contractor shall complete the Accident Prevention Plan Checklist included as an attachment to this solicitation.

(c) Activity Hazard Analysis. The "Accident Prevention Plan" required by EM 385-1-1 shall include, as a separate attachment, a detailed Activity Hazard Analysis of each phase of work. This analysis shall list all anticipated hazards and specific actions to be taken by the Contractor to prevent injury to personnel or property damage from such hazards. For projects involving major phases of work in successive stages, separate analysis shall be submitted for each such phase immediately prior to commencement of that phase. The analysis for the first phase or in the case of smaller projects, the analysis for the entire project shall be submitted with the "Accident Prevention Plan" required by Contract Clauses prior to the preconstruction conference. The Contractor's submittals will be reviewed for acceptance by designated Government personnel prior to the start of any work under this contract.

(End of clause)

13 TRAFFIC CONTROL

Maintenance of traffic and the protection of the traveling public approaching the construction area and within the limits of construction shall be the Contractor's responsibility as specified herein. The Contractor shall perform the work under this contract in a manner as to ensure the least inconvenience to traffic and shall maintain such traffic at all times with the least interference consistent with the

prosecution of the work. The Contractor shall take all necessary precautions for the protection of the work and the safety of the public. The Contractor shall furnish, erect, and maintain at intersections, at street cutoffs, and throughout the project all necessary barricades, flashing warning lights, steady burn lights, reflectors and signs to the satisfaction of the Contracting Officer. The Contractor shall provide sufficient competent flagmen as required. All flagmen shall wear fluorescent vests and use fluorescent flags. The Contractor's plan for traffic control, detailing the aforementioned measures, shall be submitted for approval to the Contracting Officer no less than five (5) days prior to commencement of construction.

(End of clause)

14 UNAVAILABILITY OF UTILITY SERVICES

The responsibility shall be upon the Contractor to provide and maintain at his own expense, adequate utilities for his use for construction and domestic consumption, and to install and maintain necessary connections and lines for same, but only at such locations and in such manner as may be approved by the Contracting Officer. Before final acceptance, temporary connections and lines installed by the Contractor shall be removed in a manner satisfactory to the Contracting Officer.

(End of clause)

15 USE OF LOCAL ROADS

The Contractor will be responsible for making all arrangements with local Government officials or owners for use of public and private roads and streets for the operations, and shall conform to all requirements regarding such use. All costs in connection therewith shall be borne by the Contractor.

(End of clause)

16 WORK UNDER OTHER CONTRACTS

Another construction project in the vicinity of this contract may simultaneously be performed during various periods of this contract. The Contractor shall coordinate with all other Contractors and their subcontractors, if any, and shall share the available work areas, including haul roads in such a manner as to minimize interference and insure an orderly completion of all the work. Specifically related to work occurring on the downstream side of the Mt. Morris Dam, the Contractor shall be advised that water levels and flow through the dam may be regulated to accommodate construction requirements. The Contractor shall also coordinate all the activities with the Contracting Officer who will make all final decisions with regards to any disputes over work areas.

(End of clause)

17 EVALUATION OF OPTIONS

Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

(End of clause)

18

OPTION TO EXTEND THE TERM OF THE CONTRACT

(a) The Government may extend the term of this contract by written notice to the Contractor within 10 calendar days; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 calendar days before the current year contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 5 years, contingent upon the appropriate environmental certifications and approvals.

(End of clause)